IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri.Appeal No. 539 of 2000

Date of Decision: 10th October, 2007

State of H.P.	Appellant
Versus	
Shyam Lal and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No

For the appellant:	Mr.Ashok Chaudhary, Addl. Advocate General
For the respondent:	None.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 25.4.2000 passed by Judicial Magistrate Ist Class, Kasauli at Solan, H.P. in Case No. 278/2 of 99/95, titled as State vs. Shyam Lal, acquitting the accused of the charged offence.

As per the case of the prosecution on 22.12.1994 a complaint was lodged by Shri Ram Lal (PW-1) that on 18.12.1994 at about 6.30 p.m., the accused persons came into the courtyard of his house and accused Shyam Lal called for him. When he came out accused Dasu and Dharmu caught hold of the complainant from the arm and accused Shyam Lal and Hira Lal threatened that they would see him today. However, PW-1 rescued himself from the accused persons and ran into his house. At that accused Shyam Lal and Hira Lal also ran behind him and after entering his house they laid down the complainant

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

on the floor and gave beatings to him. Accused Shyam Lal beat him with "Thapi" (wooden stick which is flat) (Ext.P-1) resulting into injury on his head and other parts of the body. Complainant cried when Smt. Ramku Devi, Smt. Yashoda Devi and Smt. Kamla Devi came on the spot and rescued him. On the basis of said complaint FIR (Ext.PW-1/A) was registered with Police Station, Solan, under Sections 432, 451, 323, 506 and 34, IPC. The injured was got medically examined and after completion of the investigation challan was filed in the Court for trial.

After complying with the provisions of Section 207, Cr.P.C., the accused was charged for an offence under Sections 323, 452, 506 and 34, IPC. They did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined five witnesses and the statement of the accused under Section 313, Cr.P.C. was also recorded.

Appreciating the material on record including the deposition of the witnesses, the Court below acquitted the accused of the charged offence on the ground that prosecution had miserably failed in properly investigating the matter and keeping in view the enmity and prior civil litigation between the parties, in the absence of independent witness the sole testimony of PW-1 and PW-3 an interested witness, could not be relied upon.

Ram Lal (PW-1) is the complainant. Ram Swarup (PW-2) is a witness of recovery of weapon of offence (Ext.P-1) recovered vide memo (Ext.PW-2/B). Naratu Devi (PW-3) is the mother of PW-1. Dr.Sunil Gupta (Pw-4) has medically examined PW-1. Om Parkash PW-5 is a formal witness as he has prepared challan of the case.

At the threshold, it is relevant to point out that Investigating Officer, who prepared the site plan and investigated the

case has not been examined by the prosecution. That in itself may not be a ground for acquitting the accused, but, however, in the overall circumstances it would certainly have a bearing on the case.

PW-2 has admitted in his cross-examination that the police had told him that Ext.P-1 had been given to them by PW-1. It is, thus, obvious that the same has not been recovered in his presence. Moreover, Ext.P-1 has not been recovered from the accused person either. His testimony, therefore, is not helpful to the case of the prosecution.

PW-4 has admitted that injuries sustained on the body of PW-1 could have been caused by fall. The injury is simple in nature. PW-5 is a formal witness, who has only prepared the challan.

PW-1 and PW-3, therefore, are the only witnesses to the alleged incident. Through their statements, it has come on record that animosity between the parties and that civil litigation between them is pending prior to the date of the alleged incident.

In the FIR (Ext.PW-1/A), it has been mentioned that on hearing the cries of PW-1 Smt. Ramku Devi, Smt. Yashoda Devi and Smt. Kamla Devi came on the spot. The FIR does not even mention the name of PW-3. In any event, these three independent witnesses have not been associated by the Investigating Agency nor they have been examined in the Court. As per the case of the prosecution the accused persons entered into the courtyard and then the house of PW-1 and gave him beatings inside the house after laying him on the floor. But, however, it has not come through the version of PW-1 and PW-3 that the accused persons entered into the courtyard of the house of PW-1 and gave him beatings there. That apart, PW-1 has admitted that the day after the alleged incident he went to work. Obviously, he did not report

the matter to any one. He has admitted that there is a telephone facility available in the village at a distance of about 1 ½ kms. from his house. Why PW-1 did not disclose the matter to any person including police has not been explained at all. The FIR was lodged after 4 days and the complainant did not take any medical treatment prior to that date.

PW-4 has already stated that the injury can be caused by fall. Further there is variation in the statements of PW-1 and PW-3. PW-1 has no where stated that blood was oozing from the wound whereas as per PW-3 the blood was oozing from the wound and the clothes were stained with blood. As per PW-3 she was also pushed by the accused persons whereas this fact is not corroborated by PW-1. In fact the FIR does not even mention the name of PW-3. As per the version PW-3 the matter was reported to Pradhan of Gram Panchayat whereas PW-4 is silent on this aspect. The Investigating Agency has not associated or examined the Pradhan or any of the members of the Gram Panchayat. Thus, in this view of the matter it would not be safe to rely upon the testimony of these two witnesses who are related to each other and are thus interested witnesses. Why no independent person has been associated or examined is not clear from the record. It has already come on record that there are houses belonging to other persons near the house of the complainant. Enmity between the parties has been admitted both by PW-1 and PW-2. The police has also not taken into possession the blood stained clothes of the complainant.

In my view the Court below has correctly appreciated the material and statements of the witnesses. The accused have the benefit of having been acquitted. There is nothing on record to show that the Court has perversely appreciated the material on record while arriving at its conclusion.

For the aforesaid reasons, I see no reason to interfere with the judgment rendered by the Court below. The appeal is accordingly dismissed.

10th October, 2007
(C)

(Sanjay Karol),
Judge